

STC NEWSLETTER

State Tax Commission

July 2006

COMMISSIONER NORDWALD ASSUMES DUTIES



Senator Mike Gibbons swears in Commissioner Nordwald as his wife Nina, Senator Griesheimer and Representative Sutherland look on.

The State Tax Commission's latest member, Charlie Nordwald, was sworn in on April 10, 2006. Governor Blunt named Charlie to fill the Commissioner position formerly held by Sam Leake, whose term expired. Charlie is from Warrenton, has been in the auction business since 1977, and is the owner-operator of Nordwald and Associates Auction Services, Inc. based in Hawk Point, Missouri.

Charlie was born in Warren County in 1955 and reared on the family farm which his Mom & Dad still own today. He is a graduate of Warren County R-III High School and the Missouri Auction School in Kansas City, Missouri. He and his wife, Nina, live in Warrenton and

have three adult children, Jamie, Julie and Jill and three grandchildren, Logan, Morgan and Owen.

In 1992, the citizens of the 19th district, consisting of Warren and Montgomery Counties, elected Charlie to the Missouri House of Representatives where he served five consecutive terms (ten years). During his tenure as a State Representative, he continued to maintain a successful career as an auctioneer with Allen and Nordwald Auction and Real Estate Service. In the spring of 2003, after many successful years serving the public, Charlie purchased the assets of Allen and Nordwald Auction and Real Estate Service and changed the name to Nordwald and Associates Auction and Real Estate Company.

Charlie hopes to meet as many assessors and visit as many counties as quickly as possible. His knowledge of real estate, his legislative experience, and his contagious enthusiasm combined with his outgoing personality are positive assets for the Commission.

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ELIZABETH PEARSON CHOSEN AS NEW RATIO SECTION MANAGER

The Commission has named Elizabeth Pearson to replace the retiring Chuck Trail as Manager of the Tax Commission's Ratio Section. Elizabeth has been an appraiser for the Ratio Section of the State Tax Commission since 1984, and most recently served as a commercial appraiser (appraiser two) in Southwest Missouri in the counties of Bates, Barton, Cedar, Dade, Hickory, Jasper, Lawrence, Polk, St. Clair, and Vernon. Prior to working for the STC, she worked as the appraiser/mapper for the Hickory County Assessor from 1981 to 1984.

The Ratio Section, due in part to extensive budget cuts resulting in a reduced staff, is undergoing a transition. The Commission has contracted with the International Association of Assessing Officers to review the methodology used by the ratio section and to suggest more efficient ways to measure the level and quality of assessments (see related IAAO article in this Newsletter). Elizabeth's skills and experience in the appraisal field coupled with her enthusiastic and energetic work ethic make her uniquely qualified to lead the ratio section through this era of change.

IAAO To Review STC Ratio Study Procedures

The State Tax Commission is contracting with the International Association of Assessing Officers (IAAO) to conduct a review of the statistical procedures and methodology employed by the STC's Ratio Section when determining the quality and level of assessment. The IAAO is uniquely qualified for this project and recently moved its headquarters from Chicago to Kansas City, Missouri. This organization provides a variety of seminars and courses pertaining to property tax assessments, publishes standards for assessments and for ratio studies measuring the quality of assessments, and awards professional designations pertaining to the assessment of both real and personal property to members who complete the necessary courses of study.

Currently, the STC Ratio Section, employing a statistical model developed by the University of Missouri in the 1980's, uses only appraisal studies to monitor and evaluate assessment programs in the 115 jurisdictions of the state. Appraisal studies are based upon randomly selected parcels to ensure a representative sampling, which includes, but are not limited to, properties that have sold and those that have not. However, appraisal studies are much more expensive to conduct than sales studies. Because the Commission has experienced extensive staff reductions in recent years, the goal is to develop new, more efficient methods to examine the quality and level of local assessments without sacrificing the statistical integrity of the ratio studies.

The General Assembly made the study possible by specifically appropriating funds for the project for fiscal year 2007. The contract calls for the IAAO to review current procedures and make a written report and guidelines regarding updated procedures that will, if statistically sound, include sales studies or hybrid sales-appraisal studies in jurisdictions where sufficient sales are available. The IAAO will also provide training to STC staff to implement the recommendations adopted by the Commis-

sion. The review and training are expected to be completed in the fall of 2006, with the Ratio Section incorporating any newly adopted procedures and methodology in 2007.

NEW PERSONAL PROPERTY APPEAL PROCEDURES

The State Tax Commission has amended its rules controlling business personal property appeal procedures. Deleted were provisions of 12 CSR 30-3.065 recommending that specific elements, such as a narrative explanation of the approaches to value, be contained in a personal property appraisal. New language replacing those provisions recommends that appraisals of personal property meet the minimum USPAP requirements for a summary appraisal.

Rule 12 CSR 30-3.060's amendment includes the process to be set out in a STC scheduling order for business personal property appeals. The rule now sets out that such an order will include:

- An initial discovery period. During this period, the Complainant is to provide the Respondent with access to the property and a specific list of the property under appeal.
- A period to file motions regarding discovery.
- A simultaneous exhibit exchange.
- Additional time for discovery limited to a work file exchange and deposition of experts.
- Exchange of written direct testimony.
- A time for objections and submission of rebuttal evidence.
- The subsequent setting of the hearing.

One major change the rule makes is to require that each party bear the cost of providing its work file to the other party.

The rule changes will become effective August 30, 2006, but are currently being implemented in STC appeals by order of the Commission.

HANDLING OWNERSHIP DISPUTES

Ownership and boundary disputes seem to come in a wide, endless variety of fact patterns with the one constant among them being sooner or later someone wants to involve the Assessor's Office. Dealing with this emotion-charged issue can be tricky. The information below explains the assessor has almost no role in this process, and it is a matter for the courts to decide.

The assessor receives deed transfer information from the Recorder of Deeds and bases his or her assessments on the documents filed there. §137.117 (all cites RSMo 2000) If a discrepancy exists in the recorded deeds and other documents, it is not the assessor's job to determine the true owner. In fact, the assessor is given no authority to settle ownership disputes. That is a task assigned to the courts. See, for example, §§ 527.150 and 140.330.

In *Dorman v. Minnich*, 336 S.W.2d 500, 507 (Mo. 1960) the Missouri Supreme Court held:

Further, we find nothing in the statutory plan which evidences an intention that a township assessor should be a skilled title examiner or that he should examine the land records . . . to ascertain reservations contained in deeds, and the names and interest of the numerous heirs of deceased person, resident or nonresident, or to determine the exact extent of their interest or estates in any specifically described property and assess it accordingly.

The case mentioned township assessors in a time when that office existed, but the concept and the assessment laws are the same. Consistent with the theme that property tax assessments do not establish nor destroy ownership claims, is the *Ortmeyer v. Bruemmer*, 680 S.W.2d 384, 393 (Mo.App.1984) decision that said "... the payment of taxes does not create title and the non-payment does not defeat title."

Finally, the Attorney General Opinion (Conley, A.G.Op.No. 301, July 30, 1968) sets out the proper action of the assessor and collector when two people adversely claim the same property. The Attorney General opined that the assessor should put both names in the ownership column for the property, and the collector should collect and issue receipts to both claimants. While the opinion does not express it, it seems logical that the excess money collected should be put in an escrow account until the claimants can resolve their differences either by agreement or an order of the appropriate court.

There are no simple solutions to these matters.

The assessor is not a title examiner nor does he or she have the authority to determine who possesses superior title. The method outlined above would protect both parties' interests until a court with such authority can make that determination.

SBC ORIGINAL ASSESSMENT APPEAL UNDERWAY

In 2005, SBC (Southwestern Bell Corp.) appealed the value of its state-assessed property. This appeal is made by one of the largest taxpayers in the state and impacts the valuation of that company distributed to 106 counties. For 2005, the Commission Staff set the total market value, real and personal, allocated to Missouri at \$1,818,439,098 (\$956,317,122 – real; \$862,121,976 – personal), for an assessed value of \$593,396,471. (Note: Subsequent to filing the appeal, SBC and AT&T merged. The original assessment of what was formerly only AT&T has not been appealed. To avoid confusion, the Complainant will be referred to as SBC throughout this article).

Initially, the sole issue on appeal was SBC's claim that software used to run its telecommunication switches con-

stitutes intangible personal property and that intangible value cannot be subject to personal property tax pursuant to Art. X, § 4(b) of the Missouri Constitution. SBC estimated that if it won the case completely, the reduction in value would amount to 35%-- from the STC's assessed value of \$593,396,471 to approximately \$385,707,056. However, SBC later made a motion to amend its petition to put forth the following two grounds for appeal:

(1) The final STC assessment, in its use of the income approach to valuation, improperly includes the value of intangible personal property; and

(2) The final assessment, in its reliance upon the cost approach to valuing SBC's property, failed to account for the obsolescence of SBC's property by giving inadequate weight to the Replacement Cost New Less Depreciation cost approach to valuing such property.

Consequently, the potential revenue loss could be greater than the original estimate.

In Original Assessment appeals, an assistant attorney general serve as a hearing officer to assist the Commission in hearing the case, and the Commission's legal staff represents the original assessment staff in defending the assessment. The appeal is still in the discovery stages and a hearing date has not yet been set.

STC JOB OPPORTUNITIES

The State Tax Commission has 3 vacancies. Please refer to the Commission's web site at www.stc.mo.gov for more information.

EXEMPTION OF SMALL CHURCHES

One of the most difficult areas for many assessors is deciding when property should be exempt from property taxes, and in the area of exemptions, determining the taxability of small, start-up churches is the most problematic. In qualifying for a local property tax exemption, a review must be made of the eligibility of the property owner and the eligibility of the use/operation of the specific property. The legal test for a religious exemption is whether:

1. The primary and inherent use of the property is for "religious worship." "Religious worship" embodies as a minimum requirement a belief in a Supreme Being and references the rituals, customs, and practices required or believed necessary to carry out the faith's belief in its Supreme Being; and

2. The property is owned and operated on a not-for-profit basis so that no profit may be made presently or prospectively.

CSCEA v. Nelson, 898 S.W.2d 547, 549 (Mo. banc 1995); *Missouri Church of Scientology v. State Tax Commission*, 560 S.W.2d 837, 842 (Mo. banc 1978); *Temple Emanuel v. Morton*, STC #88-11774.

In making a determination about the tax status of property reported to be used for religious purposes, important and relevant inquiries are:

1. **How is the property being used?** The assessor will have to confirm that the predominant use of the parcel or some portion of the parcel is actively being used for the religious worship of a Supreme Being. The church would need to prove the amount of land that is necessary and is actually used for the rituals, customs,

and practices required or believed necessary to carry out the faith's belief in its Supreme Being. It would also be important to know if there is any other use being made of the property. If there is, the reported religious worship might not be the primary use of the property, and the property would not be exempt from taxes.

2. How is the property owned?

The property must be owned and operated on a not-for-profit basis. When a church is owned by a not-for-profit corporation, the assessor can request their articles of incorporation and by-laws. However, if the property is owned by an association, it is much more difficult to qualify for exemption because there is no assurance there will be no profit made on the property currently or prospectively. If an association does qualify, there must be some type of binding agreement that provides if the church dissolves, the property will go to another church or not-for-profit corporation.

The church would need to provide: (1) a copy of the deed for real property showing that fee simple title is in the church (unless the assessor has received this from the recorder); and (2) within the governing documents a dissolution provision which specifically provides that all assets after payment of debts would pass to another tax exempt entity.

University To Update Methodology For Determining Productive Land Value

The General Assembly in its 2006 session earmarked specific funds for the 2007 fiscal year for the University of Missouri-Columbia's College of Agriculture (UMC) to establish an updated methodology for determining the productive value of agricultural land. Section 137.021, RSMo requires the State Tax Commission

in every odd-numbered year to promulgate a rule setting agricultural land values and to submit that proposed rule to the General Assembly. The rule becomes effective if the General Assembly does not disapprove it within the first 60 days of the session. The statute also provides that the STC may call upon the University of Missouri for assistance in determining such values.

In the process of establishing values in late 2005, concern arose that the model used by the University has become outdated. Most of those providing input agreed that extensive research needs to be done to ensure the values accurately reflect the productive value of agricultural land. At a public hearing on this topic, various points of view were expressed, including those questioning the reliability of the formula established in 1978 by the UMC Department of Agriculture using almost thirty-year old assumptions to determine present productive values. Experts from Farm Credit provided testimony that reflects a capital structure significantly different from the capital structure employed in the capitalization of net operating income used in the 1978 formula. The representative of Farm Credit testified that the actual capital structure used in capitalizing agricultural income differs substantially from the UMC study. The Commission concluded that the best evidence was the stabilized net operating income data presented by the Food and Agricultural Policy Research Institute (FAPRI), also with the UMC Department of Agriculture.

As a result of the concern over the UMC formula, the STC requested the General Assembly fund a study to establish a new, updated methodology for determining productive land values, and the General Assembly appropriated the funds. The new UMC study should be completed in time for the new model to be used in determining productive land values in 2007, values which will take effect in tax year 2009.